

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD, )  
RICARDO GONZALES, )  
INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS )  
LOCAL 38 HEALTH AND )  
WELFARE FUND, )  
INTERNATIONAL UNION OF )  
OPERATING ENGINEERS LOCAL )  
295-295C WELFARE FUND, AND )  
STEAMFITTERS FUND LOCAL )  
439, on Behalf of )  
Themselves and All Others )  
Similarly Situated, )  
  
Plaintiffs, ) CIVIL NO.:  
  
V. ) 1:17-cv-02246  
  
WALGREEN CO., )  
  
Defendant. )

\*\*\*\*\*  
ORAL AND VIDEOTAPED DEPOSITION OF  
JAMES W. HUGHES  
May 3, 2023  
\*\*\*\*\*

1 everything now?

2 A. There's Apple Mac TV, YouTube. Basically --  
3 Apple basically is a small country. I don't know what  
4 it is.

5 Q. Let's go off the record.

6 A. It has nothing to do with this case.

7 Q. Yeah. Let's go off the record to fix that so  
8 it doesn't distract you.

9 A. Okay.

10 THE VIDEOGRAPHER: Off the record at  
11 8:14 a.m.

12 (A break was taken from 8:14 a.m. to  
13 8:15 a.m.)

14 THE VIDEOGRAPHER: On the record at  
15 8:15 a.m.

16 Q. (BY MR. GUGLIELMO) Dr. Hughes, before this  
17 break, you mentioned Mr. Karacosky [sic] performed  
18 certain analyses.

19 I'm trying to understand. Did he perform  
20 queries of the data sets that were produced in this  
21 action?

22 A. To be clear, if you mean -- by queries, if you  
23 mean like Microsoft Excel queries and the like, no, he  
24 did not.

25 There were -- as you see in the figures,

1     there were certain observations that were pulled from  
2     the data, but -- I'm just going to call him Igor. Igor  
3     never did any type of crunching of the numbers, if you  
4     will. It wasn't necessary to reach the conclusions that  
5     I reached in my report.

6           Q. And so fair to say that the opinions set forth  
7     in your report are not based on any queries that could  
8     have been run on the transaction?

9                   (Reporter clarification.)

10          Q. (BY MR. GUGLIELMO) My question is, is it fair  
11     to say that the opinions set forth in your report are  
12     not based on any queries that could have been run on the  
13     data produced in the action?

14          A. Yes, that's correct.

15          Q. And so do you have a high-level understanding  
16     of how Igor was able to extract certain information that  
17     ended up in the figures set forth in your report that  
18     you just testified to?

19                   MR. LEIB: Objection.

20          Q. (BY MR. GUGLIELMO) You can answer.

21          A. Sure.

22                   The process would have been for one or more  
23     of the figures is -- let's give an example of what the  
24     data contained -- the data that Dr. Hilton proposes to  
25     use. What does it contain regarding copayment,

1     you offered an opinion that class certification was  
2     appropriate?

3             A.   I actually never offer an opinion as to whether  
4     class certification is appropriate.

5                     My opinion is limited to examining the  
6     analyses of the plaintiffs' experts, and opining on  
7     whether I believe that their presented methodology is  
8     accurate and reliable for determining classified entry  
9     and damages using common proof.

10            Q.   And in those actions, have you ever agreed with  
11     the plaintiffs' experts that the information offered is  
12     -- and the methodology presented is accurate and  
13     reliable for determining classified damages?

14            A.   No.

15                     Because the issues -- the facts are  
16     different across some of the cases, but the issues  
17     involved in plaintiff's expert reports tend to be  
18     roughly the same, and so my criticisms tend to fall into  
19     the same categories.

20            Q.   Have you ever been asked to offer a classwide  
21     damages methodology in any of the 17 cases that you've  
22     identified here in Appendix B?

23            A.   No.   I've never been asked to produce such a  
24     methodology.

25            Q.   Have you ever tried to create such a

1 but it's Mr. Smith.

2 MR. GUGLIELMO: Oh, okay. Sorry.

3 Q. (BY MR. GUGLIELMO) And with respect to the  
4 depositions, I see you identified Mr. Schroff and  
5 Ms. Hilton -- Dr. Hilton.

6 Do you see that?

7 A. Yes.

8 Q. Do you know approximately how many depositions  
9 were taken in this case?

10 A. Oh, I have no idea.

11 Q. Did you ask to review the list of depositions  
12 in this case so that you could confirm for yourself  
13 whether or not there was information within those  
14 depositions that would potentially influence your  
15 opinions?

16 A. That would have been an assignment that I gave  
17 to Analysis Group. So I did not do that personally.

18 Q. And what did Analysis Group tell you as to all  
19 the depositions that were taken in this case and their  
20 relevancy to your opinions?

21 A. I didn't ask them.

22 I worked with Analysis Group a long time,  
23 and so I trust their review, and so I didn't ask them  
24 specifically what the other depositions were.

25 They knew the analyses that I'd asked them

1     named plaintiffs' data you were looking at for purposes  
2     of understanding or supporting the opinions that are set  
3     forth in your report?

4             A.   I believe -- yes, there was -- I believe it's  
5     Mr. Gonzalez.   We looked at his data and noticed that  
6     there were times when his payment for his prescriptions  
7     dropped to zero, and we use that as an example of  
8     someone who appeared to have hit their out-of-pocket  
9     maximum, and so no longer was required to contribute to  
10    the cost of their prescription.

11            Q.   In looking at the data entitled  
12    "2019.12.03\_Named Plaintiffs' Data," did you also review  
13    any of the other data sets to compare those data sets to  
14    this?

15                         MR. LEIB:   Objection.

16            A.   Yeah.   I'm not quite sure exactly what you mean  
17    something else to compare these two.

18            Q.   (BY MR. GUGLIELMO)   Sure.

19                         Did you perform any analysis of this  
20    particular Excel data set to the other data sets that  
21    were produced in this matter?

22            A.   No, I don't believe so.   That wouldn't have  
23    been necessary to reach the conclusions that I do in my  
24    report.

25            Q.   And you didn't perform any queries of the data,

1 the 2019 data, that is referenced there in Excel,  
2 correct?

3 MR. LEIB: Objection, asked and answered.

4 A. Yes, that's correct.

5 Q. (BY MR. GUGLIELMO) If you turn towards the  
6 bottom of this section, the next page, for example,  
7 "Walgreens\_Russo\_2015\_Data\_Sample\_20230126.xlsx."

8 Do you see that?

9 A. Probably. I was scrolling and not listening  
10 exactly to which data set that you were --

11 Q. Sure.

12 It's on Page 96.

13 A. Okay.

14 Yeah, there's three Walgreens' data --  
15 three Walgreens' spreadsheets on this list.

16 Q. Sure.

17 Let's talk about the first one, the  
18 "Walgreens\_Russo\_2015\_Data\_Sample\_20230126.xlsx."

19 Do you see that?

20 A. Yes.

21 Q. What is that?

22 A. That is the sample of Walgreens' transaction  
23 data that was provided to us, and it was from the year  
24 2015.

25 Q. Who provided you that data set?



1                   Is it your understanding that you didn't  
2                   review any of the documents that Dr. Hilton produced in  
3                   this action?

4                   MR. LEIB:   Objection.

5                   A.   Did I go through her document list and look at  
6                   all of her documents?   No, I didn't.

7                   Q.   (BY MR. GUGLIELMO)   And are you aware that  
8                   Dr. Hilton produced certain queries of the transactional  
9                   data set that were also produced with her Bates prefix?

10                  A.   I understand there were queries that she  
11                  produced, yes.

12                  Q.   Okay.

13                               And you did not review them for the  
14                   purposes of offering your opinions in this report,  
15                   correct?

16                  A.   No, I didn't.

17                               To review those queries wasn't necessary to  
18                   reach the conclusions that I did in my report.

19                  Q.   And are you aware that Dr. Smith ran queries in  
20                   connection with the opinions he offered in his report?

21                  A.   No, I'm not aware of that.   I didn't speak with  
22                  Dr. Smith.   I didn't read his report so -- or Mr. Smith.

23                  Q.   Okay.   Sorry.

24                  A.   I don't know.

25                  Q.   All right.

1                   And is it fair to say that you're not  
2                   offering an opinion of any of the queries that  
3                   Dr. Hilton ran?

4                   A.    No.

5                   It seems to me that some of the things that  
6                   I have done in my report in response to Dr. Hilton  
7                   probably, I think, used the results of those queries.  
8                   So that, you know, I looked at some of the output of her  
9                   data manipulation to form my opinions.  So I don't think  
10                  it's accurate to say I didn't look at any of the output  
11                  of those queries.

12                  Q.    But you're not offering an opinion as to the  
13                  query she ran?  You couldn't have because you didn't  
14                  read them -- you didn't review them?

15                  MR. LEIB:  Objection.

16                  A.    That's right.  I did not.

17                  To review those queries wasn't necessary to  
18                  reach the opinions and the conclusions that I did in my  
19                  report.

20                  Q.    (BY MR. GUGLIELMO)  All right.

21                  MR. GUGLIELMO:  We can go off the record.

22                  THE VIDEOGRAPHER:  Off the record at  
23                  9:38 a.m.

24                  (A break was taken from 9:38 a.m. to  
25                  9:52 a.m.)

1 common injury?

2 A. I am not aware that complete data on that would  
3 exist, no.

4 Q. And let me ask you: With respect to PBM data,  
5 for example --

6 A. Uh-huh.

7 Q. -- what have you done to determine whether or  
8 not the relevant PBMs possess the data that you claim is  
9 relevant to the determining common injury?

10 A. Well, that's just it. One of my critiques of  
11 Dr. Hilton is she simply states, "Oh, I can get these  
12 data from the PBMs," and she offers no proof or other  
13 evidence that the PBMs, indeed, possess such data,  
14 especially going back as far as 2007.

15 So in my experience in other cases dealing  
16 with the PBM data, it tends to be spotty. They don't  
17 retain everything. They don't always retain in an  
18 accessible fashion. Data that's been acquired through a  
19 merger, for example.

20 So I am doubtful that the data that  
21 Dr. Hilton lightly assumes that would be readily  
22 available to her, I sincerely doubt that it would be  
23 either complete or even accurate.

24 Q. With respect to that statement, you haven't  
25 actually queried the relevant PBMs as to whether such

1 data exists, correct?

2 A. No.

3 I mean, it's my understanding that it is  
4 Dr. Hilton's burden to demonstrate that such data  
5 exists. And all I can say is from my experience in  
6 other cases in 25 years, I sincerely doubt that the --  
7 the type of data that she, again, lightly claims would  
8 be readily available, I sincerely doubt that it is.

9 Q. But, again, you offer no evidence, for example,  
10 that ESI doesn't maintain no coinsurance field, right?

11 A. Well, you can't prove a negative, but I  
12 conducted no analysis. I'm only relying on my prior  
13 experience with ESI and Optum and Caremark data that I  
14 have dealt with in other cases. That when such data are  
15 produced, there can be fields missing; there can be  
16 transactions missing; there can be -- it -- just coding  
17 mistakes in the data, and just time gaps in the data  
18 that just don't have it for certain periods of time.

19 Q. But in the past when you've reviewed ESI data,  
20 for example, you've identified coinsurance data,  
21 correct?

22 MR. LEIB: Objection.

23 A. No. I don't know that it was relevant to those  
24 other assignments that I had. So I couldn't say that I  
25 did , no.

1 "Connecticut Reconciliation Data"?

2 A. Yes.

3 Q. Okay.

4 Did you review that?

5 A. I believe I asked Analysis Group to look at it,  
6 but I didn't -- don't believe I looked at it personally.

7 Q. All right.

8 And it is not identified in Appendix C, so  
9 I would understand it doesn't form the basis of any of  
10 your opinions, correct?

11 A. That would be correct.

12 Q. Are you aware of a data set called "ESI PSC  
13 Transactional Data"?

14 A. I couldn't tell you if I -- there's a lot of  
15 different names and a lot of different data sets. So I  
16 don't know whether I'm aware of that particular Bates  
17 number or not.

18 Q. Okay.

19 And one of the things you indicated in your  
20 report is that you reviewed Dr. Hilton's report,  
21 correct?

22 A. Yes.

23 Q. Okay.

24 Did you review any of the data or queries  
25 that Dr. Hilton used to create Exhibit 3 of her report?

1           A. I would have to look at Exhibit 3. But as I  
2       said, earlier, I did not look at any of her queries  
3       because to do so was not necessary to reach the  
4       conclusions that I do in my report.

5           Q. Okay.

6                       In the course of forming your opinions, did  
7       you become aware of data that Walgreens possesses that  
8       would have assisted Dr. Hilton in her analysis?

9           A. I have no idea what Walgreens would have  
10      produced, and that's up to Dr. Hilton to decide whether  
11      it would have assisted in her analysis.

12          Q. With respect to the critiques of her  
13      methodology, did you query Walgreens as to whether or  
14      not, for example, they possess certain data that  
15      presently Dr. Hilton does not?

16          A. I did not communicate with Walgreens at all.

17          Q. Okay.

18                       Be fair to say, you didn't ask or have  
19      Analysis Group ask Walgreens if they had certain data  
20      that you identified as necessary for creating a  
21      classwide damages methodology, correct?

22          A. The data that I used was confined to the data  
23      that had been produced -- produced in this case by the  
24      time I -- report was filed.

25          Q. And is it your understanding that Analysis

1 Group didn't seek to have additional data produced in  
2 this case?

3 A. Well, again, we rely in forming reports. Like  
4 Dr. Hilton relies on forming reports, we rely on the  
5 data that's been produced.

6 And examining the data that Dr. Hilton  
7 used, it was inadequate to the task. Whether -- she  
8 claims that there's more data that will let her do what  
9 she says she wants to do, that remains to be seen.

10 Q. I guess my question is: Are you aware whether  
11 or not Analysis Group requested certain data from  
12 Walgreens that you contend has not been produced and is  
13 required for her analysis?

14 A. I don't know. I don't know whether Analysis  
15 Group made such a request or not.

16 Q. Okay.

17 If you turn to Paragraph 10 of your report,  
18 you indicate (as read): "Dr. Hilton proposes to rely on  
19 selected Walgreens transactional data and selected  
20 prescription claims data she assumes would be produced  
21 by pharmacy benefit managers (PBMs), who are not members  
22 of the class" -- the proposed class."

23 Do you see that?

24 A. Yes.

25 Q. Okay.

1     for example, if you're excluding the transactions from  
2     -- all the transactions from one person, then it seems  
3     you haven't constructed a methodology that works on a  
4     classwide basis.

5           Q.    (BY MR. GUGLIELMO)   Wouldn't that be more of  
6     your constructive conservative methodology as opposed to  
7     not having a valid methodology?   Isn't that the real  
8     concern?

9                   MR. LEIB:   Objection.

10           A.    No.

11                   I think it's a shortcoming in the  
12     methodology if you have a situation where you might be  
13     excluding all the transactions for a particular class  
14     member.   And we don't know how extensive that might be.  
15     Well, Dr. Hilton doesn't know.   I don't know, but she's  
16     made no attempt to figure this out.

17           Q.    (BY MR. GUGLIELMO)   You wouldn't know one way  
18     or another if the queries that Dr. Hilton produced would  
19     allow, for example, you or Dr. Smith to replicate her  
20     linking methodology, correct?

21           A.    I haven't looked at her queries.   That's  
22     correct.

23           Q.    And you don't know Dr. Smith's queries either.  
24     So you don't know how he proposed linking the  
25     transactions, correct?



1           A.   That's correct.

2           Q.   If he linked transactions, would you reconsider  
3 your position there in Paragraph 85 --

4                   MR. LEIB:  Objection.

5           Q.   (BY MR. GUGLIELMO)  There's --

6                   MR. GUGLIELMO:  I haven't finished the  
7 question.  So you can hold off.

8           Q.   (BY MR. GUGLIELMO)  -- your criticism regarding  
9 the linking of transactions?

10                   MR. LEIB:  Objection.

11           A.   No.

12                   Again, I have a lot of experience with PBM  
13 data going back over many years and across many  
14 companies.  And the idea that you -- it's just like you  
15 say match this number to that number, and that's all you  
16 have to do is, in my opinion, fanciful.  It's not going  
17 to work that way.  The data aren't of a sufficient  
18 quality to make that linkage on an accurate and reliable  
19 and extensive basis going back to 2007.

20           Q.   (BY MR. GUGLIELMO)  Okay.

21                   How often do you perform analyses to link,  
22 for example, pharmacy data to PBM data?

23           A.   It's not come up in my other work.

24           Q.   How often have you done it in the context of  
25 litigation?

1           A.    I haven't.

2           Q.    Okay.

3                       And so it's your testimony that you've not  
4   attempted to perform such linking? So is it fair to say  
5   you wouldn't have an understanding of whether or not  
6   it's possible or how complex it would be?

7                       MR. LEIB:  Objection.

8           A.    As a statistician, I think I have an idea of  
9   how complex it might be; but, again, I'm relying on my  
10  experience with the PBM data and pharmacy data in the  
11  past. And what you get from pharmacies and what you've  
12  get from PBMs can -- it's -- the quality of the data  
13  don't necessarily allow Dr. Hilton's analysis to be  
14  done. And it may not -- in my experience, may not even  
15  allow such a matching to be done.

16                      So, no, it wouldn't. There's been matching  
17  done on a relatively small sample from the data. It  
18  doesn't convince me that you can do this in an accurate  
19  and reliable method over whatever it is a -- back  
20  to 2007, how ever many years that is.

21           Q.    (BY MR. GUGLIELMO) But one of the -- I think  
22  earlier you told me that you decided what aspects of  
23  Dr. Hilton's report you were going to respond to,  
24  correct?

25           A.    Yes.

1           Q. And one of the aspects of the report that  
2       you're mentioning here is linking the data, correct?

3           A. Yes.

4           Q. And you didn't think it was necessary to  
5       actually attempt to link the data? You just want to  
6       provide the critique of linking, but you didn't actually  
7       try to link the data yourself here, correct?

8           A. It wasn't something that I was asked to do, and  
9       it wasn't something that was necessary to reach the  
10      conclusions that I reach in my report.

11          Q. And you have no idea what Dr. Smith's  
12      conclusions are as to linking data either, correct?

13          A. No, I don't know anything about Dr. Smith's  
14      activities.

15                 MR. LEIB: Once, again, he's going to be  
16      very happy, but it's Mr. --

17                 MR. GUGLIELMO: Mr. Smith. Yes, Mr. Smith.  
18      Thank you.

19          Q. (BY MR. GUGLIELMO) Dr. Hughes, is it your  
20      understanding that the class definition excludes branded  
21      drugs?

22          A. Yes.

23          Q. And if Dr. Hilton's transaction-by-transaction  
24      methodology is approved by the court, would a review of  
25      brand transactions be relevant in your opinion?

1           Q. If you could turn to, I guess, Figure 3 of your  
2 report.

3           A. Okay.

4           Q. And that one says (as read): "Out-of-pocket  
5 maximums Dr. Hilton's calculation falsely identifies  
6 potential consumer overpayments."

7                       Do you see that?

8           A. Yes.

9           Q. Who created this figure?

10          A. Well, again, I asked Analysis Group -- Igor,  
11 specifically -- to create an example of how  
12 out-of-pocket maximums would effect the -- out-of-pocket  
13 maximums can -- out-of-pocket maximums along with the  
14 PSC prices, how that would effect the total expenditure  
15 of the patients in the actual -- the patient in the  
16 actual world and the hypothetical, but-for world.

17          Q. Okay.

18                       And the PSC prices, who determined those  
19 prices for this figure?

20          A. I believe that would -- that Igor came up with  
21 those prices.

22          Q. Do you know if Analysis Group performed any  
23 review of, for example, what the average PSC price would  
24 be?

25          A. No.

1                   It wasn't necessary to create this  
2     hypothetical example.

3           Q.   And do you know how the PSC prices were  
4     determined for this figure?

5           A.   No, I didn't inquire.   I simply directed  
6     Analysis Group to show how the out-of-pocket maximum --  
7     the existence of an out-of-pocket maximum would effect  
8     the readjudication of the claims over the entire set of  
9     claims.

10          Q.   So is it fair to say you don't know what the,  
11     for example, average PSC price was for the transactional  
12     data that was produced in this case?

13          A.   It wasn't necessary to create this hypothetical  
14     example.   And, of course, the average PSC price would  
15     vary from month to month and year to year.   So it's not  
16     like there's a single average PSC price that would be --  
17     that would inform this in any way.   It's just a  
18     hypothetical example.

19          Q.   So you don't know whether these prices are  
20     above, below, or on average with actual PSC prices,  
21     correct?

22          A.   That's correct.

23                   These prices are hypothetical like  
24     everything else in this example.

25          Q.   Okay.

1                   And why was it that you didn't utilize  
2 actual data to create this example?

3           A. Again, it's a hypothetical example showing what  
4 could happen to someone when you take the out-of-pocket  
5 maximum and lower PSC prices into account.

6           Q. And, again, in this figure, you didn't include  
7 any TPP payments or overcharges, correct?

8           A. No.

9                   The -- I mean, TPP -- excuse me.

10                   Again, the TPP responsibility is implicit  
11 in the difference between where there's a 25 percent  
12 coinsurance, the 75 percent would be paid by the TPP,  
13 but that's implied in the calculation; but it's not used  
14 to create any estimate of an overcharge.

15           Q. If you included the TPP calculation here, would  
16 the -- wouldn't the \$160 overcharge that Dr. Hilton  
17 attributes, wouldn't that, under your hypothesis, be  
18 allocated to the TPP as an overpayment?

19           A. That's not something they looked into. This  
20 simply is looking at the consumer overpayment.

21           Q. So you don't know what the TPP overpayment  
22 would be in this hypothetical using the scenario you set  
23 forth here?

24           A. No.

25                   Because that would depend on -- see, at the

1 refresh the recollection of your report, if you'd like.

2 A. Yes.

3 Q. Okay. Great.

4 Are you aware of whether Dr. Hilton's  
5 methodology takes into account where -- whether  
6 manufacturer's coupons were used?

7 A. It does not, to my recollection.

8 Q. Okay.

9 And so you don't know if in the query sheet  
10 performed, she excluded transactions from her  
11 methodology where the plan type would have included  
12 manufacturer coupons?

13 A. I have no idea what you're talking about.

14 Q. Okay.

15 You didn't -- in terms of forming your  
16 opinion here, you didn't look to see whether or not her  
17 analysis, based on the query she ran, excluded  
18 manufacturer's coupons based on the data she reviewed  
19 that Walgreens produced?

20 A. Well, that's my point. Why would you exclude  
21 them? They're still transactions.

22 Q. My question is, you didn't look at the query to  
23 know one way or another whether or not she did exclude  
24 manufacturer's coupon transactions from consideration  
25 for damages?

1           A.    Yeah.

2                       As I said numerous times before, I did not  
3   look at her queries because it wasn't necessary to reach  
4   the conclusions in my report.

5           Q.    Well, you say (as read): "To know whether  
6   copay coupons used by a consumer apply to their  
7   deductible and out-of-pocket maximums, it would be  
8   necessary to determine which health plans adopted copay  
9   accumulators." I guess, you're talking about two things  
10  there.

11                   But in terms of the copay accumulator, are  
12  you aware that PBMs maintain data as to the use of copay  
13  accumulators?

14           A.    Yes, I assume that's a part of their  
15  adjudication code.

16           Q.    Okay.

17                   Going back to the bullet -- I think I was  
18  referring to about copay coupons. You state (as read):  
19  "It would be necessary" -- I think it's in the middle of  
20  that. (As read): "It would be necessary to identify  
21  which consumer payments in the PBM are Walgreens' data  
22  reflect the use of a copay coupon, and remove that  
23  amount when determining if a consumer met their  
24  deductible or out-of-pocket maximum."

25                   Do you see that?



1           A.   Yes.

2           Q.   Are you aware that data produced in this case  
3 does indicate or identify when a copay coupon was used?

4           A.   I haven't -- I haven't looked at it.   So I  
5 don't know one way or another.   It wouldn't surprise me  
6 if it were.

7           Q.   And if it were, would that resolve the concern  
8 you have here?

9           A.   No.   Not really.

10                   Because we're -- I mean, we're talking  
11 about using transactional data.

12                   And while they keep track of the copay  
13 coupons and they keep track of the copay accumulators,  
14 that doesn't mean that that's going to show up in the  
15 transactional data.   That's going to be a different  
16 file, if you will.

17           Q.   But if it is -- if, in fact, was produced in  
18 the case, and, in fact, it does exist in the data, would  
19 that resolve the concern you have here?

20           A.   No.

21                   Because it -- sorry.

22                   MR. LEIB:   Yeah, objection.

23                   Go ahead.

24                   THE WITNESS:   Okay.

25           A.   It doesn't.

1                   Because, again, in transactional data, if  
2                   you see somebody hitting their out-of-pocket maximum  
3                   with a coupon or without a coupon, seeing that they've  
4                   hit their out-of-pocket maximum in the transactional  
5                   data doesn't tell you what their out-of-pocket maximum  
6                   is in order to do the readjudication.

7                   Q.   (BY MR. GUGLIELMO)   I don't believe that was my  
8                   question.

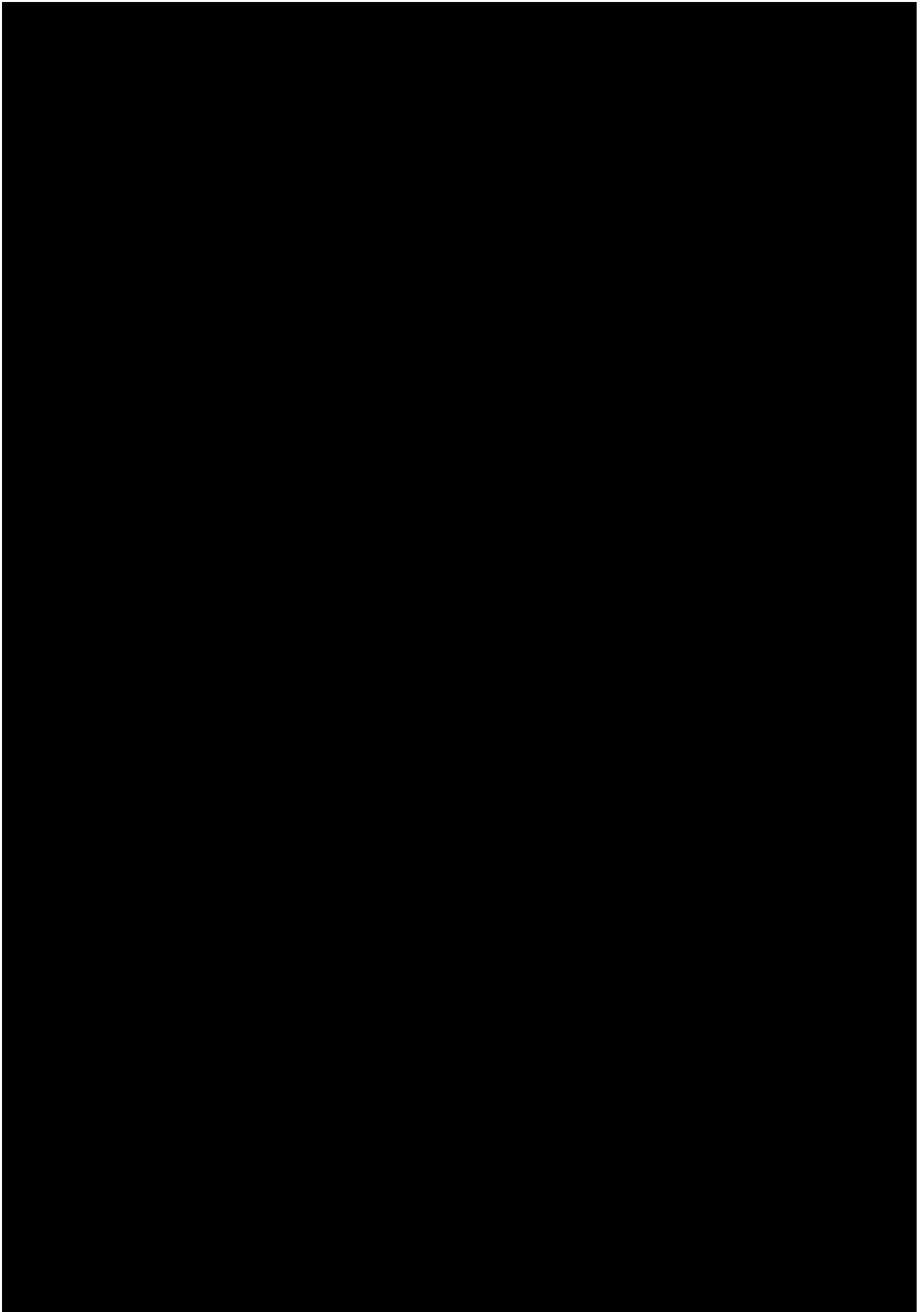
9                   MR. GUGLIELMO:   I'll move to strike.

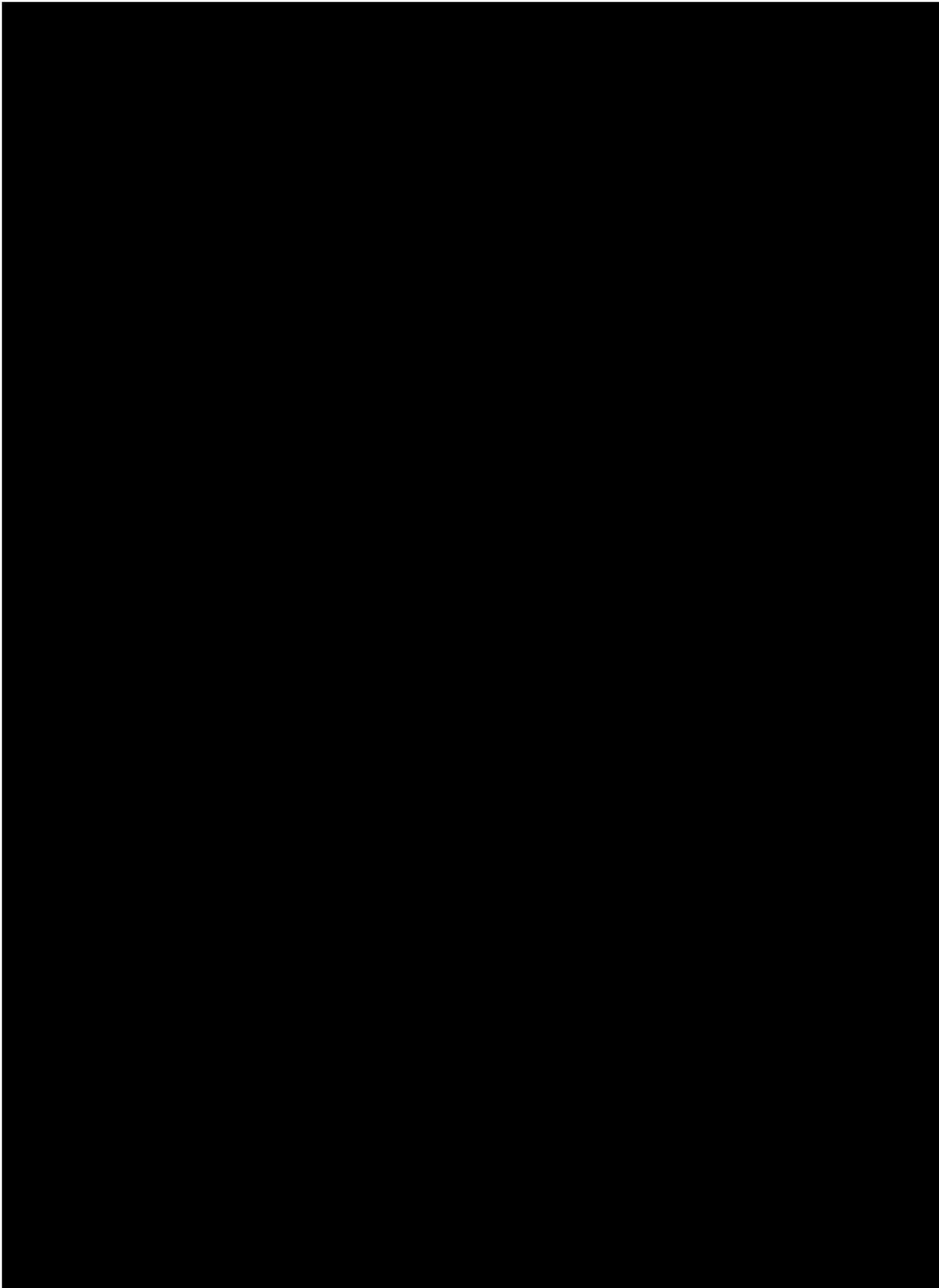
10                  Q.   (BY MR. GUGLIELMO)   I think my question was --  
11                  but if the data or indicating a copay coupon was, in  
12                  fact, produced and does exist in the data sets produced  
13                  by Walgreens and the relevant PBMs, wouldn't that  
14                  resolve the concern you have here about accounting for  
15                  copay coupons?

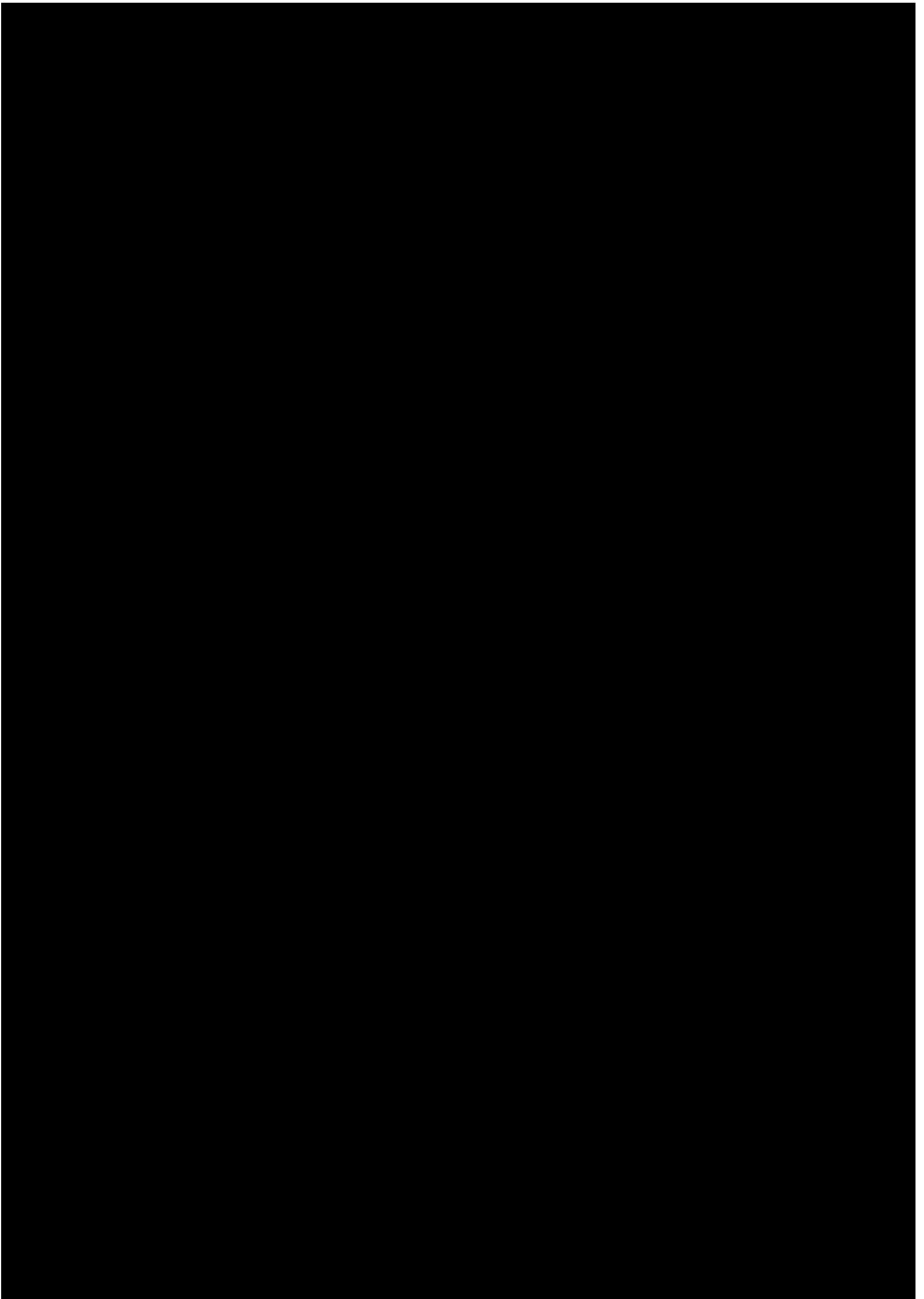
16                  MR. LEIB:   Objection.

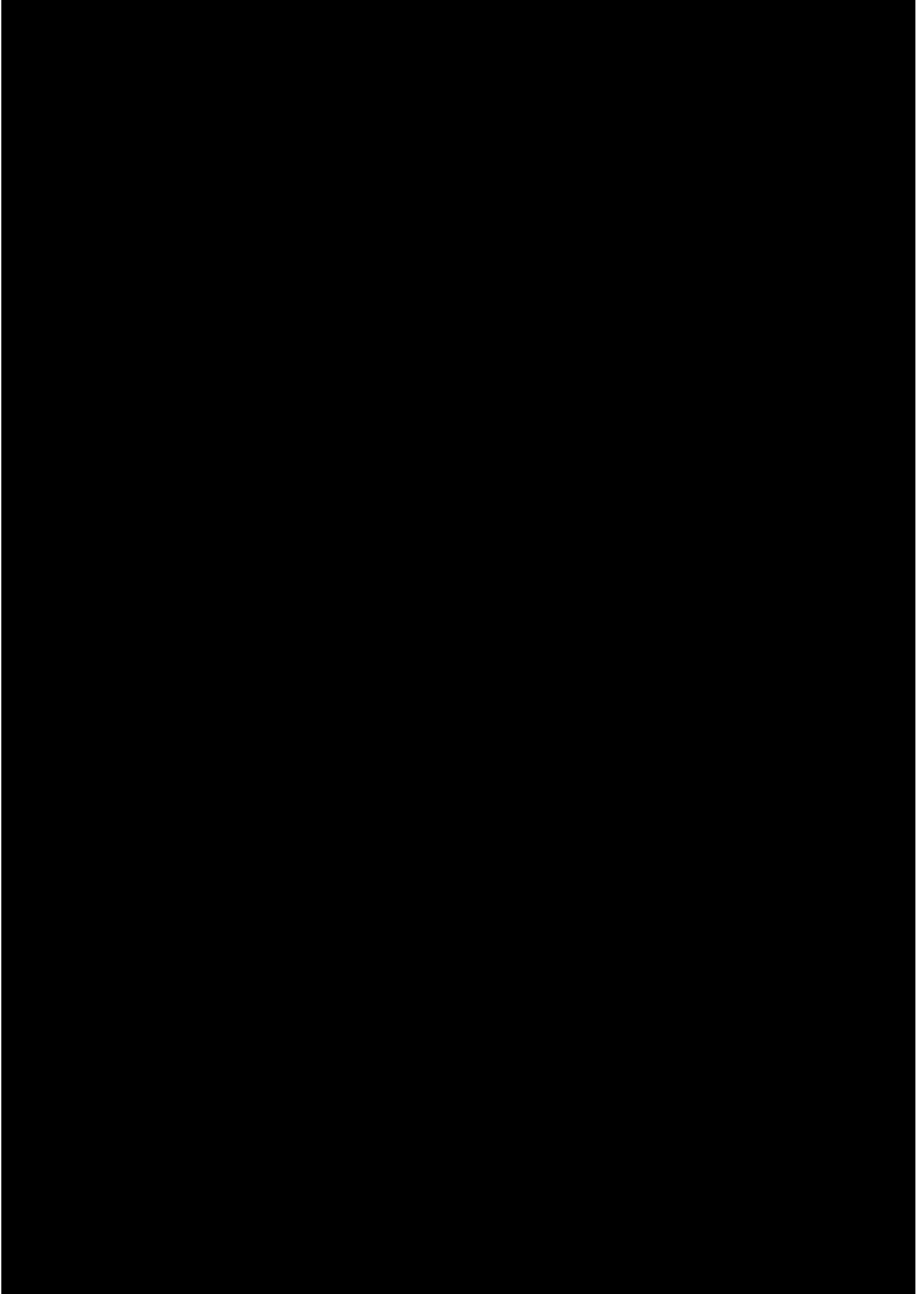
17                  A.   Well, again, it's that -- where the copay  
18                  coupons are going to enter into as the last part of the  
19                  bullet says (as read):  "Determining if the consumer has  
20                  met the deductible or out-of-pocket maximum," the copay  
21                  coupon will be involved whether they met their  
22                  deductible or out-of-pocket maximum; but it's not going  
23                  to reveal what the deductible or out-of-pocket maximum  
24                  is for purposes of readjudication.

25                  Q.   (BY MR. GUGLIELMO)   Okay.









1           A. No. It was a complete hypothetical, and so all  
2 of the prices in here should be considered hypothetical.

3           Q. Okay.

4                       Turn to Paragraph 141 of your report. The  
5 heading reads --

6           A. Yes.

7           Q. -- "Potentially Tens or Even Hundreds of  
8 Thousands of Individual of TPPs Would Need to be  
9 Assessed as Possible Members of the Proposed Class."

10                      Do you see that?

11          A. Yes.

12          Q. Okay.

13                      And below that you cite to and, I believe,  
14 rely on Form 5500 information; is that right?

15          A. Yes.

16          Q. Okay.

17                      Are you aware of whether or not Walgreens  
18 produced data sufficient to identify the third-party  
19 payors or plans in this action?

20          A. I don't know.

21          Q. Okay.

22                      If you were given access to data relating  
23 to the identity of third-party payors, would you rely on  
24 that information over the information you have here in  
25 the Form 5500 data?

1           A. No, I don't think so.

2                   I mean, that's part of the problem when --  
3   if Walgreens identifies a so-called, third-party payor,  
4   is that a PBM? Is it an ASO or TPA organization? Or is  
5   it actually the TPP end payor, who is supposed to be a  
6   member of the proposed class.

7                   And very often, in my experience in the PBM  
8   data, they are listing as the "TPP." They're listing the  
9   ASO organization, which is very common because  
10   self-insured -- in employer's insurance, self-insurance  
11   is very common, and so using an insurance company to  
12   administer the plan is quite common.

13           Q. Do you have any understanding that whether or  
14   not Dr. Smith reviewed Walgreens' data to identify the  
15   number of health plans who had claims adjudicated by the  
16   relevant PBMs?

17           A. No, I'm not aware of anything that Dr. Smith --  
18   Mr. Smith did.

19           Q. Okay. Yes, Mr. Smith. Thank you.

20                   And so you're not aware of whether  
21   Mr. Smith offered a methodology to identify plans who  
22   had claims adjudicated by relative PBMs?

23           A. Again, I didn't read Dr. Smith -- excuse me --  
24   Mr. Smith's report, nor did I speak with him about his  
25   conclusions.



1           Q.   Okay.

2                       In looking at the list that you have here,  
3   for example -- 2010, 2011, going onto 2013 -- in terms  
4   of counting plans -- and you have 276,000 there, for  
5   example, fully insured -- would you have counted a  
6   single plan for each year?  So such that, if there's one  
7   single plan, you've counted it ten times?

8           A.   Yes, that would be the case here.

9                       Because there are -- over that time period,  
10   there are plans that maintain the entire ten-year  
11   period.  There are plans that disappear from the data  
12   because they have changed or gone out of business or  
13   whatever the case is, and there's new plans that come  
14   along.

15                      So, yes, this is a raw summation, and you  
16   are correct that if there was one plan that was in there  
17   in each of the ten years, it would be counted ten times.  
18   That's correct.

19           Q.   And do you know what data fields exist within  
20   Walgreens' data that would allow the parties to identify  
21   unique plans?

22                      MR. LEIB:  Objection.

23           A.   Again, when you say "identify plans," are you  
24   identifying the class members as the plan, or are you  
25   identifying some other entity like a PBM or an ASO as

1 the plan?

2 Q. (BY MR. GUGLIELMO) Well, let's start with --  
3 let's start with, for example, a third-party payor such  
4 as one of the plaintiffs in this action.

5 Are you aware of the data fields that exist  
6 within Walgreens' data that would allow the parties to  
7 identify, for example, Steamfitters?

8 A. Right.

9 But the union benefit plans are different  
10 because they're contracting directly with -- directly  
11 with the PBM. There's no other entity between the PBM  
12 and the Steamfitters.

13 That's not the case for most of the  
14 employer self-insured plans. They -- the self-insured  
15 plans, more often than not, do not contract directly  
16 with the PBM, but rather contract with an insurance  
17 company to administer their claims; and it's that  
18 insurance company that usually appears in the data  
19 usually in my experience.

20 MR. GUGLIELMO: Move to strike.

21 Q. (BY MR. GUGLIELMO) My question is, have you  
22 reviewed the data within Walgreens' systems to determine  
23 whether or not that data would be sufficient to allow  
24 the parties to identify, for example, Steamfitters?

25 A. Well, again, they can -- they can identify

1     Steamfitters only because that they have contracted  
2     directly with the PBM. And as far as reviewing the  
3     Walgreens' data, it's neither here nor there.

4             Because, again, in my experience, the --  
5     what's listed as the TPP may be the class member. But  
6     for self-insured plans, more often than not, it's not  
7     the class member. It's the ASO representative.

8             Q. So it's your opinion that you don't need to  
9     look at Walgreens' data to form an opinion that you  
10    can't identify what, for example, plan is actually  
11    attributed to that transaction?

12            MR. LEIB: Objection.

13            A. No.

14            I mean, I have -- I've seen pharmacy  
15    transaction data and PBM data all along, and it's quite  
16    common that it's not the actual end payor. It's not the  
17    actual class member that is represented in the data.

18            Q. (BY MR. GUGLIELMO) Again, my question is, did  
19    you look at -- is it your opinion you don't need to look  
20    at Walgreens' data to render this opinion? In other  
21    words, you haven't looked at Walgreens' data as to this  
22    issue. You don't need to look at it to render this  
23    opinion, correct?

24            MR. LEIB: Objection.

25            A. From my experience, I would not need to look at

1 the Walgreens' data to render this opinion. That's  
2 correct.

3 Q. (BY MR. GUGLIELMO) And you're not relying on  
4 whether or not the data contains fields sufficient to  
5 identify whether it's a TPP, whether it's an ASO, and  
6 all the other concerns that you just identified,  
7 correct?

8 A. I have not reviewed the Walgreens' data for  
9 that, but, no. I'll leave it at that. I have not  
10 reviewed the Walgreens' data for that.

11 Q. And you don't know if Dr. Smith has -- or  
12 Mr. Smith?

13 A. Yes. I don't know anything that Mr. Smith may  
14 have done.

15 Q. Okay.

16 Dr. Hughes, are you offering an opinion as  
17 to whether or not Walgreens' data is accurate?

18 A. Depends on what you mean by "accurate."

19 Q. Are you offering an opinion as to whether or  
20 not Walgreens' data is accurate to allow the parties to  
21 create a classwide method to identify damages?

22 A. To TPP class members?

23 Q. To class members.

24 A. Well, there's two types of class members, and  
25 so I need to know which one we're talking about.

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,) )  
RICARDO GONZALES, ) )  
INTERNATIONAL BROTHERHOOD ) )  
OF ELECTRICAL WORKERS ) )  
LOCAL 38 HEALTH AND ) )  
WELFARE FUND, ) )  
INTERNATIONAL UNION OF ) )  
OPERATING ENGINEERS LOCAL ) )  
295-295C WELFARE FUND, AND ) )  
STEAMFITTERS FUND LOCAL ) )  
439, on Behalf of ) )  
Themselves and All Others ) )  
Similarly Situated, ) )

Plaintiffs, )

) CIVIL NO.:

) 1:17-cv-02246

V. )

WALGREEN CO., )

Defendant. )

REPORTER'S CERTIFICATION  
DEPOSITION OF JAMES W. HUGHES  
May 3, 2023

That the deposition transcript was delivered  
to Mr. Joseph Guglielmo.

That a copy of this certificate was served on  
all parties and/or the witness shown herein on

\_\_\_\_\_.

I further certify that pursuant to FRCP Rule  
30(f)(1) that the signature of the deponent:

1 (X) was requested by the deponent or a party  
2 before the completion of the deposition and that  
3 signature is to be before any notary public and returned  
4 within 30 days from date of receipt of the transcript.

5 If returned, the attached Changes and  
6 Signature Page contains any changes and the reasons  
7 therefore:

8 ( ) was not requested by the deponent or a  
9 party before the completion of the deposition.

10 I certify that I am neither counsel for,  
11 related to, nor employed by any of the parties or  
12 attorneys in the action in which this proceeding was  
13 taken, and further that I am not financially or  
14 otherwise interested in the outcome of the action.

15 Certified to by me this 18 day of May,  
16 2023.

17  
18  
19  
20 

21 \_\_\_\_\_  
22 ABIGAIL GUERRA, Texas CSR 9059

23 Expiration Date: 02/28/24

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1 CYNTHIA RUSSO, et al. vs. WALGREEN CO.

2 5/3/2023 - James W. Hughes (#5881051)

3 E R R A T A S H E E T

4 PAGE 13 LINE 19 CHANGE "2021" to 2020"

5 REASON correcting testimony

6 PAGE 16 LINE 3 CHANGE "exclusively for occasionally" to

7 "exclusively except for occasionally"

8 REASON transcription error

9 PAGE 24 LINES 7-10 CHANGE "Specifically, I don't know what analysis

10 he would have done when we would have conference calls to discuss

11 the - the work so far. Dr. Mortimer was usually on those calls" to

12 "Specifically, I don't know what analysis he would have done. When

13 we would have conference calls to discuss the - the work so far,

14 Dr. Mortimer was usually on those calls"

15 REASON transcription error

16 PAGE 24 LINE 22 CHANGE "pulled the samples the data" to "pulled the

17 samples of the data"

18 REASON transcription error

19 PAGE 26 LINE 25 Add "the" - "if you turn to the page"

20 REASON transcription error

21 PAGE 27 LINE 3 CHANGE "off" to "on"

22 REASON transcription error

23 PAGE 32 LINE 7 CHANGE "is" to "are"

24 REASON transcription error

25 PAGE 38 LINE 17 CHANGE "by" to "of"

26 REASON transcription error

27 PAGES 40-41 LINE 25-1 ADD "at" - "transmitted to counsel at"

28 REASON transcription error

1 PAGE 51 LINE 4 ADD "a" - "plain with a drug benefit"  
2 REASON transcription error  
3 PAGE 54 LINE 9 ADD "not" - "I regretfully say they are not  
4 publishable"  
5 REASON transcription error  
6 PAGE 54 LINE 11 CHANGE "through" to "them"  
7 REASON transcription error  
8 PAGE 57 LINE 8 CHANGE "classified" to "classwide"  
9 REASON transcription error  
10 PAGE 60 LINE 6 CHANGE "answer" to "ask for"  
11 REASON transcription error  
12 PAGE 61 LINE 1 CHANGE "Dymond" to "Dymon"  
13 REASON transcription error  
14 PAGE 61 LINE 6 CHANGE "Dymond's" to "Dymon's"  
15 REASON transcription error  
16 PAGE 62 LINE 22 ADD "For" - "Analysis Group for a long time"  
17 REASON transcription error  
18 PAGE 65 LINE 5 CHANGE "Gonzalez" to "Gonzales"  
19 REASON transcription error  
20 PAGE 70 LINE 13 CHANGE "picked" to "pick"  
21 REASON transcription error  
22 PAGE 72 LINE 18 CHANGE "it's not, but it's what we got" to "it's  
23 not, but it's - what we got"  
24 REASON transcription error  
25 PAGE 72 LINE 25 CHANGE "as" to "to"  
26 REASON transcription error  
27 PAGE 78 LINE 10 CHANGE "academy" to "academic"  
28 REASON transcription error



1 PAGE 84 LINE 21 CHANGE "lightly" to "likely"  
2 REASON transcription error  
3 PAGE 84 LINE 21 DELETE "likely"  
4 REASON clarification of testimony  
5 PAGE 85 LINE 7 CHANGE "lightly" to "likely"  
6 REASON transcription error  
7 PAGE 85 LINE 7 DELETE "likely"  
8 REASON clarification of testimony  
9 PAGE 89 LINE 12 CHANGE "Express Scripts" to "Walgreens"  
10 REASON correction of testimony  
11 PAGE 90 LINE 3 CHANGE "classified" to "classwide"  
12 REASON transcription error  
13 PAGE 90 LINE 12 CHANGE "perceives" to "proceeds"  
14 REASON transcription error  
15 PAGE 91 LINE 11 CHANGE "classified" to "classwide"  
16 REASON transcription error  
17 PAGE 91 LINE 13 CHANGE "classified" to "classwide"  
18 REASON transcription error  
19 PAGE 91 LINES 22-23 CHANGE "No. In the end, I was not asked to  
20 offer an opinion on her unjust enrichment methodology" to "Dr.  
21 Hilton's unjust enrichment methodology relies in part on her  
22 ability to demonstrate that she can identify overpayments by class  
23 members using common proof, which I am offering an opinion on. But,  
24 no, I am not offering a separate opinion on her unjust enrichment  
25 methodology beyond the part that addresses the inability of Dr.  
26 Hilton's methodology to identify overpayments by class members"  
27 REASON Correction of testimony  
28

1 PAGE 94 LINE 5 CHANGE "I believe I asked Analysis Group to look at  
2 it but I didn't - don't believe I looked at it personally" to "I  
3 don't believe I looked at it personally"

4 REASON correction of testimony

5 PAGE 95 LINE 24 CHANGE "I" to "my"

6 REASON transcription error

7 PAGE 96 LINE 4 CHANGE "relies on" to "relies on in"

8 REASON transcription error

9 PAGE 97 LINE 10 CHANGE "data not" to "data is not"

10 REASON transcription error

11 PAGE 98 LINE 25 ADD "an" - "I am offering an opinion"

12 REASON transcription error

13 PAGE 103 LINE 1 CHANGE "methodology, it's" to "methodology is"

14 REASON transcription error

15 PAGE 104 LINE 22 DELETE "a" - "based on U&C"

16 REASON transcription error

17 PAGE 109 LINE 5 ADD "the" - "are made well after the transaction"

18 REASON transcription error

19 PAGE 109 LINE 20 CHANGE "practice" to "pricing"

20 REASON transcription error

21 PAGE 110 LINE 22 CHANGE "effect" to "affect"

22 REASON transcription error

23 PAGE 111 LINES 4-8 CHANGE "The GER payment formula is contained in  
24 the contract between the TPP and the PBM, and Walgreens would  
25 typically not have access to the terms of that contract. So I  
26 would think your answer - the answer to your question would be no"  
27 to "The GER payment formula I refer to in my report is contained in  
28 the contract between the TPP and the PBM, and Walgreens would

1 typically not have access to the terms of that contract. So I would  
2 think your answer -- the answer to your question would be no  
3 because Walgreens does not charge the TPP. That GER payment should  
4 be considered, however, in connection with evaluating any  
5 overcharge paid by the TPP that Plaintiffs claim resulted from  
6 Walgreens not reporting its PSC prices as its U&C prices to the  
7 PBMs."

8 REASON Correction of testimony

9 PAGE 113 LINE 21 CHANGE "identifying" to "identifiable"

10 REASON transcription error

11 PAGE 115-116 LINES 25-1 CHANGE "overpayments as she calculates  
12 derivative from the consumers overpayments that she calculates" to  
13 "overpayments she calculates derives from the consumer overpayments  
14 that she calculates"

15 REASON transcription error

16 PAGE 117 LINE 14 CHANGE "either individual" to "either an  
17 individual"

18 REASON transcription error

19 PAGE 118 LINE 9 CHANGE "effect" to "affect"

20 REASON transcription error

21 PAGE 119 LINES 2-4 CHANGE "I do believe that there were cases where  
22 one of the named plaintiff received a stop-loss payment" to "I do  
23 believe that there were cases where one of the named plaintiffs  
24 purchased stop-loss insurance"

25 REASON correction of testimony

26 PAGE 122 LINE 10 ADD "a" - "I can't really identify a"

27 REASON transcription error

28 PAGE 130 LINE 13 CHANGE "Gonzalez" to "Gonzales"

1 REASON transcription error

2 PAGE 133 LINE 5 CHANGE "classified" to "classwide"

3 REASON transcription error

4 PAGE 133 LINE 13 CHANGE "classified" to "classwide"

5 REASON transcription error

6 PAGE 134 LINE 15 CHANGE "there" to "that"

7 REASON transcription error

8 PAGE 136 LINE 16 CHANGE "linking" to "link"

9 REASON transcription error

10 PAGE 136 LINE 17 CHANGE "classified" to "classwide"

11 REASON transcription error

12 PAGE 141 LINE 4 CHANGE "that" to "then"

13 REASON transcription error

14 PAGE 144 LINE 7 CHANGE "calculation overstates" to "calculation  
15 that overstates"

16 REASON transcription error

17 PAGE 145 LINE 14 CHANGE "effect" to "affect"

18 REASON transcription error

19 PAGE 152 LINES 19-20 CHANGE "Determining if the consumer has met  
20 the deductible" to "Determining if a consumer has met their  
21 deductible"

22 REASON clarification of testimony

23 PAGE 162 LINE 19 ADD "of" - "or that it would be of sufficient  
24 quality"

25 REASON transcription error

26 PAGE 167 LINE 18 CHANGE "been produced" to "have been produced"

27 REASON transcription error

28

1 PAGE 170 LINES 23-24 CHANGE "the classwide data would show because  
2 it's only 2015" to "the classwide data would show because it's only  
3 2014 and 2015"

4 REASON correction of testimony

5 PAGE 171 LINE 17 CHANGE "Well, again, as I said, this is only for  
6 2015" to "Well, again, as I said, this is only for 2014 and 2015"

7 REASON correction of testimony

8 PAGE 175 LINE 17 DELETE "[Sic]"

9 REASON unnecessary

10 PAGE 175 LINES 18-20 CHANGE "And, again, she didn't - she didn't  
11 use the data to separate when she was doing for Steamfitters" to  
12 "And again, she didn't - she didn't use the data to separate copay  
13 and coinsurance when she was doing the analysis for Steamfitters"

14 REASON clarification of testimony

15 PAGE 176 LINE 2 ADD "is" - "We don't know what is there"

16 REASON transcription error

17 PAGE 177 LINES 9-10 CHANGE "that it's not" to "that she cannot"

18 REASON transcription error

19 PAGE 180 LINE 20 CHANGE "consumers" to "consumers'"

20 REASON transcription error

21 PAGE 183 LINE 17 CHANGE "manufacturer's discount" to "manufacturer  
22 discounts"

23 REASON transcription error

24 PAGE 188 LINE 1 DELETE "that"

25 REASON transcription error

26 PAGE 202 LINE 11 CHANGE "Hey" to "hey"

27 REASON transcription error

28 PAGE 202 LINE 12 CHANGE "and" to "in"

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1 REASON transcription error

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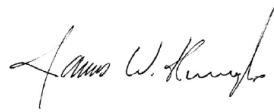
1 CYNTHIA RUSSO, et al. vs. WALGREEN CO.

2 5/3/2023 - James W. Hughes (#5881051)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, James W. Hughes, do hereby declare that I have read the  
5 foregoing transcript, I have made any corrections, additions, or  
6 changes I deemed necessary as noted above to be appended hereto,  
7 and that the same is a true, correct and complete transcript of the  
8 testimony given by me.

9  
10  
11 I declare under penalty of perjury under the laws of the United  
12 States that the foregoing is true and correct.

13   
14 \_\_\_\_\_

15 James W. Hughes  
16  
17

18 This 16 day of June, 2023  
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